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STATE OF MISSISSIPPI  
COUNTY OF DESOTO

### ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is made by and between ATHLETIC CLUB HOLDING COMPANY, LLC, a Mississippi limited liability company whose address is 3146 Goodman Road, Southaven, Mississippi 38672 ("ACHC"), and FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national banking association whose address is 165 Madison Avenue, Memphis, Tennessee 38103 ("FTB").

#### WITNESSETH:

THAT, WHEREAS, ACHC owns Lot 4A, Twin City Commons DeSoto Subdivision, and FTB owns, via Warranty Deed from ACHC recorded simultaneously herewith, Lot 3, Twin City Commons DeSoto Subdivision, which are adjoining tracts of land (respectively, the "ACHC Property" and the "FTB Property") with frontage on Goodman Road in the City of Southaven, DeSoto County, Mississippi, which land is described, respectively, on **EXHIBIT "A"** and **EXHIBIT "B,"** attached hereto and hereby made a part hereof; and,

WHEREAS, ACHC, as the owner of the ACHC Property and the prior owner of the FTB Property, has constructed an access drive (the "Access Drive") leading into and lying on, over and across the ACHC Property and the FTB Property and connecting Goodman Road and Creech Drive for the purposes of providing vehicular and pedestrian access to and from Goodman Road or Creech Drive;

WHEREAS, ACHC has also constructed or will construct a road known as Creech Drive, a fifty (50) foot dedicated public right-of-way shown on the Final Plat, Lots 1 & 3, Twin City Commons DeSoto Subdivision, Southaven, Mississippi, as shown on plat of record at Plat Book 90, pages 3 and 4, in the Chancery Court Clerk's Office for DeSoto County, Mississippi ("Creech"); and

WHEREAS, Creech has been dedicated to the City of Southaven by plat and all parties hereto anticipate that the City of Southaven will take over all maintenance and upkeep responsibilities regarding Creech approximately one year after the final completion of Creech (such date when Creech becomes publicly maintained hereinafter referred to as the "Dedication Date"); and

WHEREAS, as a condition to FTB's purchase of the FTB Property from ACHC, ACHC has agreed to grant to FTB a non-exclusive, perpetual easement to use those portions of the Access Drive lying within the ACHC Property for the benefit of FTB, its tenants, and their respective employees, agents, customers, contractors, licensees and invitees, FTB has agreed to grant to ACHC a non-exclusive, perpetual easement to use those portions of the Access Drive lying within the FTB Property for the benefit of ACHC, its tenants, and their respective employees, agents, customers, contractors, licensees and invitees, and ACHC has agreed to grant to FTB a non-exclusive easement to use all of Creech for the benefit of FTB, its tenants, and their respective employees, agents, customers, contractors, licensees and invitees until the Dedication Date, when Creech shall become a publicly maintained right-of-way:

NOW, THEREFORE, in consideration of the foregoing premises and the terms, conditions, covenants and provisions contained herein, it is agreed as follows:

1. Grant of Easements.

(a) *Access Easements to FTB.*

(i) Subject to the terms and conditions set forth herein, ACHC hereby grants and conveys to FTB, its heirs, successors and assigns, for FTB and their benefit and for the benefit of FTB and its lessees, employees, agents, customers, contractors, licensees and invitees, a perpetual, non-exclusive, easement of access, appurtenant to the FTB Property, over and across the Access Drive shown on **EXHIBIT "C,"** attached hereto and incorporated herein by reference (the "First Access Easement Area") lying on the ACHC Property for the sole purpose of unobstructed vehicular and pedestrian ingress and egress, free of charge, to and from the FTB Property from and to Goodman Road and Creech Drive.

(ii) ACHC also hereby grants and conveys to FTB, its heirs, successors and assigns, for FTB and their benefit and for the benefit of FTB and its lessees, employees, agents, customers, contractors, licensees and invitees, a non-exclusive easement of access, appurtenant to the FTB Property, over and across Creech, as described on **EXHIBIT "D,"** attached hereto and incorporated herein by reference (the "Second Access Easement Area") for the sole purpose of unobstructed vehicular and pedestrian ingress and egress, free of charge, to and from the FTB Property, until the Dedication Date.

(b) *Perpetual Access Easement to ACHC.* Subject to the terms and conditions set forth herein, FTB hereby grants and conveys to ACHC, its heirs, successors and assigns, for ACHC and their benefit and for the benefit of ACHC and its lessees, employees, agents, customers, contractors, licensees and invitees a perpetual, non-exclusive, easement of access, appurtenant to the ACHC Property, over and across that portion of the First Access Easement Area lying on the FTB Property, for the sole purpose of unobstructed vehicular and pedestrian ingress and egress, free of charge, to and from the ACHC Property from and to Goodman Road and Creech Drive.

2. Access Drive and Creech.

(a) Those portions of the Access Drive lying on both the ACHC Property and the FTB Property shall be kept, maintained and repaired in a uniform 'first class' manner and condition by ACHC, its successors and assigns. The Access Drive shall be kept and maintained free and clear of dirt, trash and debris. The surface of the Access Drive shall be kept, maintained and repaired in a smooth condition, free of bumps, humps, or holes; and, the surface of said drive shall also be kept, maintained and repaired so as to be free of any cracks or holes that either significantly impair the remaining life of said drive's surface material or allows water to react, penetrate, infiltrate or saturate said drive's stone base material or sub-grade. The maintenance and repair of the Access Drive contemplated herein includes, but is not limited to, the resurfacing and/or reconstruction of said drive. The duty to perform maintenance upon and make repairs to

the Access Drive shall be the obligation of ACHC. The cost of maintenance and repairs to the Access Drive shall be allocated sixty-five percent (65%) to the owner(s), other than FTB, of property abetting or benefiting from the Access Drive (including ACHC, its successors and assigns) of the ACHC Property and thirty-five percent (35%) to the owner(s) of the FTB Property. FTB shall reimburse ACHC for its allocation of said cost within thirty (30) days after receipt of a statement tendered by ACHC, together with such invoices, vouchers and substantiation of such charges as FTB may reasonably request. If any other party is given a similar easement across the Access Drive, then the cost of such maintenance and repairs for the Drive shall be prorated among the parties using the Drive. FTB hereby grants to ACHC and its successors and assigns an easement to enter onto those portions of the Access Drive lying within the FTB Property for construction and maintenance purposes to carry out the maintenance activities described herein at reasonable times and in a reasonable manner. All maintenance activities on the FTB Property shall be conducted in a manner which will cause the least disruption reasonably practicable to FTB's business operations and activities on the FTB Property.

(b) FTB shall have no maintenance obligations whatsoever related to Creech or the Second Access Easement Area. ACHC and its successors and assigns shall keep, maintain and repair Creech and the Second Access Easement Area in a uniform "first class" manner and condition, as described in Section 2(a), above.

3. Insurance; Indemnification.

(a) *Insurance Requirements Between the Parties Hereto.* The parties shall carry, at their own cost, general public liability insurance covering their respective properties with combined bodily injury, death and property damage limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. All such insurance shall name the other party as an additional insured and shall contain a waiver of subrogation against such other party. Each party shall furnish, annually, to the other party a certificate of insurance, or copy thereof, evidencing the insurance coverage required under this paragraph.

(b) *Assignment of Prior Indemnification Agreements related to the FTB Property.* Any indemnification previously given or made to ACHC by any other party to any other access easement agreement regarding the Access Drive, Creech, the First Access Easement Area, or the Second Access Easement Area is hereby expressly assigned by ACHC to FTB to the extent that any claims, judgments, costs of defense, including reasonable attorneys' fees, expenses, penalties, and damages of every kind or character may arise out of the use and operation of or may occur on that portion of the First Access Easement Area lying within the FTB Property.

4. Further Action. The parties shall, with reasonable promptness, undertake such actions in accordance with this Agreement and applicable law as shall be reasonably necessary and appropriate to carry out and put into effect that which is contemplated herein.

5. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. The terms 'party' or 'parties' as used herein shall mean the person or persons

presently or hereafter holding title to or having a fee simple interest in any portion of the ACHC Property and FTB Property.

6. Duties and Obligations Run With Land. Each and all of the duties, obligations, terms, conditions, covenants and provisions contained herein shall run with the ACHC Property and the FTB Property; and, such duties, obligations, terms, conditions, covenants and provisions contained herein shall touch, concern, encumber, bind and inure to the benefit of every person, now and in the future, holding title to or having a fee simple interest in any portion of the ACHC Property or FTB Property.

7. Discharge of Rights and Duties Upon Transfer. In the event of future assignment, transfer or conveyance of the whole of the interest of any party in and to the ACHC Property or FTB Property, without such party retaining any interest therein, other than as a collateral security interest through a mortgage or deed of trust, the powers, rights, duties, obligations and interests conferred upon and assumed by such party herein shall be deemed assigned, transferred or conveyed to such assignee, transferee or grantee and the duties and obligations of the party to assigning, transferring and conveying such interest shall be discharged. Notwithstanding the foregoing, ACHC's powers, rights, duties, obligations and interests related to AZ Holdings, LLC, an Arkansas limited liability company and its successors and assigns, under that certain Access Easement Agreement recorded May 24th, 2004, at Deed Book 472, page 735, as revised and re-recorded at Deed Book 486, page 258 in the Chancery Clerk's Office for DeSoto County, Mississippi, shall remain in full force and effect and shall not be deemed assigned, transferred or conveyed to FTB and the duties and obligations of ACHC with respect thereto shall not be deemed discharged.

8. Abandonment. The easements granted herein shall not be forfeited or abandoned for non-use.

9. Cooperation. The parties hereto may in the future decide to pursue the dedication of the Access Drive to the City of Southaven as a public right-of-way. Should the parties determine to pursue that course of action, each party will cooperate with the other in negotiating and effectuating a transfer of that portion of the Access Drive lying on such party's property in order to achieve such dedication. The obligation of FTB to participate or cooperate in any such dedication, however, shall be contingent on FTB's obtaining a variance or other resolution satisfactory to FTB regarding local government authority zoning requirements, platted setback lines, and the location of any buildings upon the FTB Property.

10. Notice. All notices, elections or other communications that may be required or permitted under this Agreement shall be in writing and signed by the party, or the party's agent or attorney, giving such notice, election or other communication, and shall be delivered personally or sent by certified or registered mail, return receipt requested, to the other party to whom the notice, election or communications is directed at the address(es) of such other party as set forth herein or as any subsequent address(es) a party may hereafter designate by written notice in accordance with the terms of this provision. The date of service of a notice, election or other communication shall be the date of personal delivery, or if sent by mail, the date of delivery as evidenced on the return receipt.

If to FTB, to:	First Tennessee Bank National Association 165 Madison Avenue Memphis, Tennessee 38103 Attn: Thomas F. Baker, IV, Corporate Real Estate
If to ACHC, to:	Mr. Robert D. Creech 3146 Goodman Road Southaven, MS 38672
With copy to:	Chuck Roberts Commercial Real Estate 5779 Getwell Road Building D, Suite 1 Southaven, MS 38672 Attn: Chuck Roberts

11. Attorney Fees. In the event either party brings or defends an action or proceeding against the other party, which arises out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party, in addition to any other relief or award granted, its reasonable attorneys' fees, disbursements and court costs. In the event either party (the "Intervener") is not in default in the payment or performance of its obligations under this Agreement and such party becomes a party or movant in any bankruptcy, insolvency or probate action or proceeding which purports to affect either party's interest under this Agreement, the Intervener shall be entitled to recover from the other party, in addition to any other relief or award granted, its reasonable attorneys' fees, disbursements and court costs incurred in connection with such action or proceeding.

12. Paragraph Headings. The heading or title of any paragraph appearing in this Agreement, and the order of its listing, is for convenience of reference only and shall not be used in any way to define, limit, simplify or aid in the interpretation of the terms, conditions, provisions and requirements hereof.

13. Gender and Number. Whenever masculine, feminine, neuter, singular, plural, conjunctive or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all parties and all circumstances, except where the context of this Agreement clearly dictates otherwise,

14. Materiality. Each and every term, condition, covenant, provision and requirement contained herein is material to this Agreement.

15. Severability. In the event any term, condition, provision, section, paragraph, sentence, clause, phrase or word contained in this Agreement, or the application thereof in any circumstances, is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the validity and enforceability of the remainder of this Agreement, and the application of any such term, condition, provision, section, paragraph, sentence, clause, phrase or word in other circumstances, shall not be affected thereby.

16. Waiver Not Implied. The failure or forbearance of either party to exercise or enforce any right or remedy under this Agreement, or at law or in equity, on any one or more occasions shall not be deemed to imply or constitute a further waiver of the same or any other term, condition, provision or requirement of this Agreement, such right or remedy or any other term, condition, provision, or requirement of this Agreement shall continue to remain in full force and effect as if no such forbearance or waiver had occurred.

17. Entire Agreement. This Agreement constitutes the sole, entire and only agreement between the parties, pertaining to the subject matter hereof, and except to the extent specifically provided for herein, this Agreement supercedes and voids all prior agreements and understandings of the parties in connection therewith. No term, condition, covenant, provision or warranty not expressly incorporated herein shall be effective to interpret, change or restrict this Agreement.

18. Amendment. No amendment, modification, change or alteration of this Agreement shall be effective unless the same shall be in writing, dated subsequent to the date hereof, and executed by the parties.

19. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, construed and enforced in accordance with the laws of the State of Mississippi.

20. Counterparts. This Agreement may be executed in two or more identical counterparts, each of which, when executed, shall constitute an original.

21. Forum Selection. Both parties hereto consent to the jurisdiction and venue of the Chancery Court of Desoto County, Mississippi for any legal proceeding arising out of or related to this Agreement.

[Separate Signature Pages Follow]

## [Counterpart Signature Page to Access Easement Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the date below their signatures, but effective on the 24<sup>th</sup> day of November, 2004.

## ATHLETIC CLUB HOLDING COMPANY, LLC

By: [Signature]  
 Name: Robert Creech  
 Title: Pres.

Date: 11/24/04

## ACKNOWLEDGMENT OF ATHLETIC CLUB HOLDING COMPANY, LLC

STATE OF MISSISSIPPI

COUNTY OF DESOTO

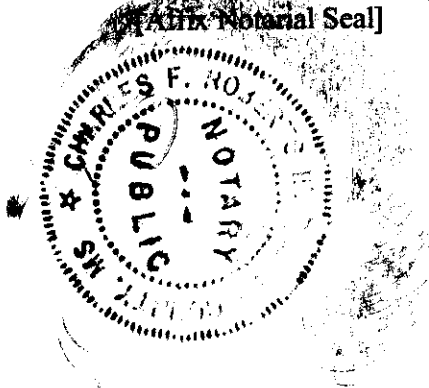
Personally appeared before me, the undersigned authority in and for the said county and state, on this 24<sup>th</sup> day of November, 2004, within my jurisdiction, the within named Robert Creech, who acknowledged that he/she is President of ATHLETIC CLUB HOLDING COMPANY, LLC, a Mississippi limited liability company, and that for and on behalf of said limited liability company and as the act and deed of said limited liability company, he/she executed the above and foregoing instrument after first having been duly authorized by said limited liability company so to do.

[Signature]  
 Notary Public

My Commission Expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
 MY COMMISSION EXPIRES MARCH 10, 2007  
 BONDED THROUGH REGAL NOTARY SERVICE

[Affix Notarial Seal]



## [Counterpart Signature Page to Access Easement Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the date below their signatures, but effective on the 24<sup>th</sup> day of November, 2004.

## FIRST TENNESSEE BANK NATIONAL ASSOCIATION

By: Thomas F. BakerDate: 11/23/04

Name: Thomas F. Baker, IV

Title: Executive Vice-President

## ACKNOWLEDGMENT OF FIRST TENNESSEE BANK NATIONAL ASSOCIATION

STATE OF TENNESSEE

COUNTY OF SHELBY

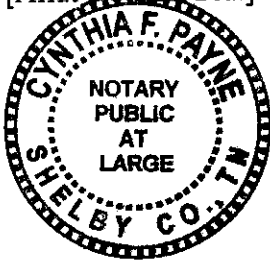
Personally appeared before me, the undersigned authority in and for the said county and state, on this 23<sup>rd</sup> day of November, 2004, within my jurisdiction, the within named Thomas F. Baker, IV, who acknowledged that he is the Executive Vice-President of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national banking association, and that for and on behalf of said national banking association and as the act and deed of said national banking association, he/she executed the above and foregoing instrument after first having been duly authorized by said national banking association so to do.

Cynthia F. Payne  
Notary Public

My Commission Expires:

~~MY COMMISSION EXPIRES MARCH 27, 2007~~

[Affix Notarial Seal]





**EXHIBIT "A":  
ACHC PROPERTY**

Lot 4A, as shown on Final Plat, Lots 3, 4, and 4A, Twin City Commons DeSoto Subdivision, Southaven, Mississippi, as shown on plat of record at Plat Book 86, page 12, in the Chancery Court Clerk's Office for DeSoto County, Mississippi, to which plat reference is made for a more particular description.

**EXHIBIT "B":  
FTB PROPERTY**

Lot 3, as shown on Final Plat, Lots 1 & 3, Twin City Commons DeSoto Subdivision, Southaven, Mississippi, as shown on plat of record at Plat Book 90, pages 3 and 4, in the Chancery Clerk's Office for DeSoto County, Mississippi, to which plat reference is hereby made for a more particular description.





INSTRUMENT PREPARED BY:

ROBERT C. LIDDON, ESQ. (MSB # 1253)  
BAKER, DONELSON, BEARMAN, CALDWELL  
& BERKOWITZ, PC  
165 MADISON AVENUE  
MEMPHIS, TN 38103  
TELEPHONE: (901) 577-2269

ACHC'S ADDRESS & TELEPHONE NUMBER:

ATHLETIC CLUB HOLDING COMPANY, LLC  
3146 GOODMAN ROAD  
SOUTHAVEN, MISSISSIPPI 38672  
TELEPHONE: (662) 349-0403

FTB'S ADDRESS & TELEPHONE NUMBER:

FIRST TENNESSEE BANK NATIONAL ASSOCIATION  
165 MADISON AVENUE  
MEMPHIS, TENNESSEE 38103  
ATTENTION: CORPORATE REAL ESTATE  
TELEPHONE: (901) 523-4906

INDEXING INSTRUCTIONS:

SECTION 27, TOWNSHIP 1 SOUTH, RANGE 7 WEST

Southaven, DeSoto County, Mississippi